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7 Attorneys for Defendant JUDGE ROBERT ATTACK  
(erroneously named as JUDGE ROBERT ATTACK)

8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 SAN JOSE DIVISION

12 **BEVERLY THORP,**

13 Plaintiffs,

14 v.

15 **JUDGE ROBERT ATTACK, et al.,**

16 Defendants.

Case No. C08-01449 JF

**JUDGE ROBERT ATTACK'S NOTICE OF  
MOTION AND MOTION TO DISMISS  
[FRCP 12(b)(1) & 12(b)(6)]**

**Date: June 20, 2008**

**Time: 9:00 a.m.**

**Place: USDC Courthouse  
280 South First Street,  
Courtroom #3, 5<sup>th</sup> Floor  
San Jose, California**

**Judge: Hon. Jeremy Fogel**

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18  
19 TO PLAINTIFF IN PROPRIA PERSONA:

20 PLEASE TAKE NOTICE that on June 20, 2008 at 9:00 a. m. in Courtroom 3 of the  
21 above-entitled court, located at 280 South First Street, Fifth Floor, San Jose, California,  
22 Defendant JUDGE ROBERT ATTACK (erroneously named as JUDGE ROBERT ATTACK)  
23 (hereinafter "Judge Attack") will and hereby does move this Court to dismiss all claims for relief  
24 against him pursuant to Rules 12(b)(1) & 12(b)(6) of the Federal Rules of Civil Procedure. This  
25 motion is made on the grounds that plaintiff's complaint fails to establish subject matter  
26 jurisdiction and fails to state claims in which relief can be granted against Judge Attack.

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1 This motion is and shall be based upon this notice of motion and motion, the  
2 accompanying memorandum of points and authorities filed herewith, all pleadings and papers on  
3 file in the matter herein, and upon such matters as may be presented to the Court at the time of  
4 hearing.

5 Dated: April 18, 2008.

6 Respectfully submitted,

7 EDMUND G. BROWN JR.  
8 Attorney General of the State of California

9 PAUL T. HAMMERNESS  
10 Supervising Deputy Attorney General

11  
12 s/s Troy B. Overton  
13 TROY B. OVERTON  
14 Deputy Attorney General

15 Attorneys for Defendant JUDGE ROBERT ATTACK  
16 (erroneously named as JUDGE ROBERT ATTACK)

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **THORP, Beverly v. Judge Robert Attack**

No.: **C 08-01449JF**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On April 18, 2008, I served the attached **JUDGE ROBERT ATTACK'S NOTICE OF MOTION AND MOTION TO DISMISS [FRCP 12(b)(1) & 12(b)(6)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Beverly Thorp  
c/o Box 2070  
Sunnyvale, CA 94087

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 18, 2008, at San Francisco, California.

\_\_\_\_\_  
Rosalinda E. Asuncion

Declarant

\_\_\_\_\_  
s/s Rosalinda E. Asuncion

Signature